

AMENDED IN SENATE JANUARY 6, 2014

**SENATE BILL**

**No. 636**

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**Introduced by Senator Hill**

**(Coauthors: Senators Evans, Leno, Wolk, and Yee)**

**(Coauthors: Assembly Members Gordon, Levine, Mullin, Ting, and Yamada)**

February 22, 2013

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An act to amend Section 34188 of the Health and Safety Code, relating to redevelopment 1701.2 of the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 636, as amended, Hill. ~~Redevelopment Property Tax Trust Fund allocations; excess Educational Revenue Augmentation Fund moneys; Public Utilities Commission; proceedings.~~

*(1) Existing law establishes certain procedures that are applicable to adjudication, rulemaking, and ratesetting cases of the Public Utilities Commission.*

*This bill would prohibit an officer, employee, or agent of the commission that is assigned to assist in the prosecution of, to testify in, or to supervise the prosecution of an adjudication case from participating in the decision of the case or in the decision of any factually related proceeding. The bill would permit an officer, employee, or agent of the commission that is assigned to assist in the prosecution of, an adjudication case to participate in reaching a settlement of the case, but would prohibit the officer, employee, or agent from participating in the decision of the commission to accept or reject the settlement, except as a witness or counsel in an open hearing or a specified closed hearing.*

(2) *The California Constitution authorizes the commission to establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process, and to establish rules for all public utilities.*

*This bill would correct certain statutory references from the commission adopting regulations to the commission adopting rules.*

~~Existing law requires the county auditor-controller, in each fiscal year, to allocate property tax revenue to local jurisdictions in accordance with specified formulas and procedures, and generally requires that each jurisdiction be allocated an amount equal to the total of the amount of revenue allocated to that jurisdiction in the prior fiscal year, subject to certain modifications, and that jurisdiction's portion of the annual tax increment, as defined. Existing law also reduces the amounts of ad valorem property tax revenue that would otherwise be annually allocated to the county, cities, and special districts pursuant to these general allocation requirements by requiring, for purposes of determining property tax revenue allocations in each county for the 1992–93 and 1993–94 fiscal years, that the amounts of property tax revenue deemed allocated in the prior fiscal year to the county, cities, and special districts be reduced in accordance with certain formulas. Existing law requires the transfer of the local property tax revenues not allocated to the county, cities, and special districts as a result of these reductions to the Educational Revenue Augmentation Fund (ERAF) in that county for allocation to school districts, community college districts, and the county office of education, with any remaining excess funds allocated to the county, cities, and special districts.~~

~~Existing law additionally requires the county auditor-controller to determine annually the amount of property taxes that would have been allocated to each redevelopment agency had the agency not been dissolved and to deposit that amount into the Redevelopment Property Tax Trust Fund. Existing law requires the county auditor-controller for each fiscal year to allocate moneys in the Redevelopment Property Tax Trust Fund for passthrough payment obligations, enforceable obligations of the dissolved redevelopment agency, and administrative costs, as specified. Any remaining moneys in the Redevelopment Property Tax Trust Fund are required to be distributed as local property tax revenues to local agencies and school entities, which may include ERAF, as prescribed.~~

*This bill would modify the provision of law relating to the allocation of remaining local property tax revenues in the Redevelopment Property*

~~Tax Trust Fund by deleting language requiring that the provision be construed in such a manner so as to not increase any allocations of excess, additional, or remaining ERAF funds that would otherwise have been allocated to cities, counties, cities and counties, or special districts pursuant to existing law.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1701.2 of the Public Utilities Code is  
2     amended to read:  
3     1701.2. (a) If the commission pursuant to Section 1701.1 has  
4     determined that an adjudication case requires a hearing, the  
5     procedures prescribed by this section shall be applicable. The  
6     assigned commissioner or the assigned administrative law judge  
7     shall hear the case in the manner described in the scoping memo.  
8     The scoping memo shall designate whether the assigned  
9     commissioner or the assigned administrative law judge shall preside  
10    in the case. The commission shall provide by ~~regulation~~ rule for  
11    peremptory challenges and challenges for cause of the  
12    administrative law judge. Challenges for cause shall include, but  
13    not be limited to, financial interests and prejudice. The ~~regulation~~  
14    rule shall provide that all parties are entitled to one peremptory  
15    challenge of the assignment of the administrative law judge in all  
16    cases. All parties are entitled to unlimited peremptory challenges  
17    in any case in which the administrative law judge has within the  
18    previous 12 months served in any capacity in an advocacy position  
19    at the commission, been employed by a regulated public utility,  
20    or has represented a party or has been a party of interest in the  
21    case. The assigned commissioner or the administrative law judge  
22    shall prepare and file a decision setting forth recommendations,  
23    findings, and conclusions. The decision shall be filed with the  
24    commission and served upon all parties to the action or proceeding  
25    without undue delay, not later than 60 days after the matter has  
26    been submitted for decision. The decision of the assigned  
27    commissioner or the administrative law judge shall become the  
28    decision of the commission if no further action is taken within 30  
29    days. Any interested party may appeal the decision to the  
30    commission, provided that the appeal is made within 30 days of

1 the issuance of the decision. The commission may itself initiate a  
2 review of the proposed decision on any grounds. The commission  
3 decision shall be based on the record developed by the assigned  
4 commissioner or the administrative law judge. A decision different  
5 from that of the assigned commissioner or the administrative law  
6 judge shall be accompanied by a written explanation of each of  
7 the changes made to the decision.

8 *(b) An officer, employee, or agent of the commission that is*  
9 *assigned to assist in the prosecution of, to testify in, or to supervise*  
10 *the prosecution of an adjudication case before the commission*  
11 *shall not participate in the decision of the case, or in the decision*  
12 *of any factually related proceeding, including participation in or*  
13 *advising the commission as to findings of fact, conclusions of law,*  
14 *or orders. An officer, employee, or agent of the commission that*  
15 *is assigned to assist in the prosecution of an adjudication case*  
16 *may participate in reaching a settlement of the case, but shall not*  
17 *participate in the decision of the commission to accept or reject*  
18 *the settlement, except as a witness or counsel in an open hearing*  
19 *or a hearing closed pursuant to subdivision (d). The Legislature*  
20 *finds that the commission performs both prosecutorial and*  
21 *adjudicatory functions in an adjudication case and declares its*  
22 *intent that an officer, employee, or agent of the commission,*  
23 *including its attorneys, may perform only one of those functions*  
24 *in any adjudication case or factually related proceeding.*

25 ~~(b)~~

26 *(c) Ex parte communications shall be prohibited in adjudication*  
27 *cases.*

28 ~~(c)~~

29 *(d) Notwithstanding any other provision of law, the commission*  
30 *may meet in a closed hearing to consider the decision that is being*  
31 *appealed. The vote on the appeal shall be in a public meeting and*  
32 *shall be accompanied with an explanation of the appeal decision.*

33 ~~(d)~~

34 *(e) Adjudication cases shall be resolved within 12 months of*  
35 *initiation unless the commission makes findings why that deadline*  
36 *cannot be met and issues an order extending that deadline. In the*  
37 *event that a rehearing of an adjudication case is granted the parties*  
38 *shall have an opportunity for final oral argument.*

39 ~~(e)~~

(f) (1) The commission may determine that the respondent lacks, or may lack, the ability to pay potential penalties or fines or to pay restitution that may be ordered by the commission.

(2) If the commission determines that a respondent lacks, or may lack, the ability to pay, the commission may order the respondent to demonstrate, to the satisfaction of the commission, sufficient ability to pay potential penalties, fines, or restitution that may be ordered by the commission. The respondent shall demonstrate the ability to pay, or make other financial arrangements satisfactory to the commission, within seven days of the commission commencing an adjudication case. The commission may delegate to the attorney to the commission the determination of whether a sufficient showing has been made by the respondent of an ability to pay.

(3) Within seven days of the commission's determination of the respondent's ability to pay potential penalties, fines, or restitution, the respondent shall be entitled to an impartial review by an administrative law judge, of the sufficiency of the showing made by the respondent of the respondent's ability to pay. The review by an administrative law judge of the ability of the respondent to pay shall become part of the record of the adjudication and is subject to the commission's consideration in its order resolving the adjudication case. The administrative law judge may enter temporary orders modifying any financial requirement made of the respondent pending the review by the administrative law judge.

(4) A respondent that is a public utility regulated under a ~~rate-of-return or rate-of-margin~~ *rate of return or rate of margin* regulatory structure or that has gross annual revenues of more than one hundred million dollars (\$100,000,000) generated within California is presumed to be able to pay potential penalties or fines or to pay restitution that may be ordered by the commission, and, therefore, paragraphs (1) to (3), inclusive, do not apply to that respondent.

~~SECTION 1. Section 34188 of the Health and Safety Code is amended to read:~~

~~34188. For all distributions of property tax revenues and other moneys pursuant to this part, the distribution to each taxing entity shall be in an amount proportionate to its share of property tax revenues in the tax rate area in that fiscal year, as follows:~~

1     ~~(a) (1) For distributions from the Redevelopment Property Tax~~  
2     ~~Trust Fund, the share of each taxing entity shall be applied to the~~  
3     ~~amount of property tax available in the Redevelopment Property~~  
4     ~~Tax Trust Fund after deducting the amount of any distributions~~  
5     ~~under paragraphs (2) and (3) of subdivision (a) of Section 34183.~~

6     ~~(2) For each taxing entity that receives passthrough payments,~~  
7     ~~that agency shall receive the amount of any passthrough payments~~  
8     ~~identified under paragraph (1) of subdivision (a) of Section 34183;~~  
9     ~~in an amount not to exceed the amount that it would receive~~  
10    ~~pursuant to this section in the absence of the passthrough~~  
11    ~~agreement. However, to the extent that the passthrough payments~~  
12    ~~received by the taxing entity are less than the amount that the~~  
13    ~~taxing entity would receive pursuant to this section in the absence~~  
14    ~~of a passthrough agreement, the taxing entity shall receive an~~  
15    ~~additional payment that is equivalent to the difference between~~  
16    ~~those amounts.~~

17    ~~(b) Property tax shares of local agencies shall be determined~~  
18    ~~based on property tax allocation laws in effect on the date of~~  
19    ~~distribution, without the revenue exchange amounts allocated~~  
20    ~~pursuant to Section 97.68 of the Revenue and Taxation Code, and~~  
21    ~~without the property taxes allocated pursuant to Section 97.70 of~~  
22    ~~the Revenue and Taxation Code.~~

23    ~~(c) The total school share, including passthroughs, shall be the~~  
24    ~~share of the property taxes that would have been received by school~~  
25    ~~entities, as defined in subdivision (f) of Section 95 of the Revenue~~  
26    ~~and Taxation Code, in the jurisdictional territory of the former~~  
27    ~~redevelopment agency, including, but not limited to, the amounts~~  
28    ~~specified in Sections 97.68 and 97.70 of the Revenue and Taxation~~  
29    ~~Code.~~